

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 15, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: SB 65, SB 87, SB 112, SB 124,
SB 158

EXECUTIVE ACTION ON SB 87

Valencia Lane explained that the amendments entitled SB008702.av1, **EXHIBIT(jus11a01)** were prepared to address the concern that the use of the term reasonable care and the standard in subsection (1) may not extend to subsection (2) lines 19-22.

Al Smith, Montana Trial Lawyers Assoc., agreed with the amendments regarding the duty of reasonable care.

Motion: SEN. HALLIGAN MOVED TO AMEND SB 87.

Ken Hoovestal, Snowmobile Association, stated that they support the amendments.

Vote: The motion carried unanimously.

Ms. Lane reported that **SEN. DOHERTY** had requested additional amendments this morning. She was unable to prepare them before the meeting. She questioned the necessity for the amendments because they related to immunity and this bill no longer grants immunity.

CHAIRMAN GROSFIELD, referring to the elimination of the gross negligence standard on page 2, questioned the liability of the snowmobile area operator with respect to negligence versus gross negligence. In specific he questioned the liability involved when a person rented a machine which malfunctioned while it was being operated and the person was injured.

Mr. Smith stated that there is a section which addresses maintenance of machines and this would be ordinary negligence.

Ms. Lane clarified that under the old law, a snowmobile area operator would not have been liable unless he acted with gross negligence. If he knew the snowmobile had problems and let someone rent the machine knowing they could be injured. If he did not know there was anything wrong with the machine, this would be the lowest standard of negligence and the operator would not have been liable. This bill changes that situation and now the operator could be sued if negligence could be proven.

Mr. Hoovestal remarked that under 23-2-655 the language states that a person who engages in the business of renting snowmobiles to another shall maintain rental snowmobiles in a safe condition.

SEN. HALLIGAN questioned how this would apply to persons who went off the trail and were in open areas.

CHAIRMAN GROSFIELD added that a person may ask the person he is renting the machine from where a good place is to leave the trail. The operator may describe an area and the snowmobiler uses this area but due to the activity the day before a stump may be uncovered. This includes thousands of acres. He questioned what liability the snowmobile operator would have in recommending play areas.

SEN. HALLIGAN remarked that the language stated "snowmobile trails and open areas". **CHAIRMAN GROSFIELD** added that the language also stated "for the designation of". He questioned the definition of the word designation.

Mr. Smith clarified that state and federal government travel maps include designated snowmobile areas. This opens up the areas that are not designated and would not be covered by this section. Subsection (3) address risks inherent. The Forest Service has a policy that if there is an identified hazard on the trail that they had designated, they would post a warning or take care of it. In the case that prompted this legislation, the hazard was identified the day before as a severe dip. It was looked at in the evening and the decision was to take care of it in the morning. The next morning it was determined to be dangerous but the decision was to fill in the dip instead of putting up a sign. A sign was not put up, it was not filled in and later in the day an individual was severely injured.

Motion: SEN. HOLDEN MOVED SB 87 DO PASS AS AMENDED.

SEN. BARTLETT believed that most of the state was open to the operation of snowmobiles unless it was specifically not opened to snowmobiles. Open areas would not be cared for on a regular basis. She questioned the liability of the snowmobile operator and the snowmobile area operator.

Maggie Whitman, Legislative Affairs Coordinator for the Forest Service, agreed to provide information for the committee.

Mr. Hoovestall stated that this legislation addresses the trail systems and designated areas that are under the control and maintenance of an entity. Snowmobiling in open areas would be the same as hunting, skiing, hiking, horseback riding, etc. This legislation does not address persons off on their own. This would involve the general liability of the situation.

SEN. BARTLETT maintained that this bill was proposed to limit the areas in which there is some liability for snowmobile area operators. She is not confident that this has been accomplished.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON SB 112

Motion: SEN. HALLIGAN MOVED SB 112 DO PASS.

Discussion:

SEN. BARTLETT maintained that her understanding is that this bill would begin to require that for parole purposes any of these offenders would already be under a legal obligation to have provided the sample.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON SB 124

Ms. Lane explained that the amendments - SB012401.avl, **EXHIBIT (jus11a02)** would eliminate section 6 of the bill, page 4, lines 11-28. The section currently requires a biannual report to the governor and the legislature regarding severely emotionally disturbed youth. There was some discussion at the hearing that the report is a useful document. The amendment would require the biannual report.

SEN. BARTLETT stated there was testimony to the fact that legislators may not read this report but many of the groups most intimately concerned with mental health delivery in the state find it very valuable.

CHAIRMAN GROSFIELD questioned the cost of preparing the report.

Dan Anderson, Department of Public Health and Human Services, stated the additional cost would be minimal.

Motion/Vote: **SEN. HALLIGAN MOVED TO AMEND SB 124. The motion carried unanimously.**

Motion: **SEN. MCNUTT MOVED SB 124 DO PASS AS AMENDED.**

Discussion:

SEN. BARTLETT remarked that testimony at the hearing was that a fiscal note may be necessary. People in custody of the department may be transferred for placement up to 10 days and the bill would change the 30 day absolute limitation on out-of-state commitments.

Dan Anderson, Department of Public Health and Human Services, believed there would not be a fiscal impact. One of the features of the transfers from the prison is that they have to accept the transfer. They cannot be put in a position where they are taking more people than can be handled within their budget.

Vote: The motion carried unanimously, 9-0.

EXECUTIVE ACTION ON SB 158

{Tape : 1; Side : B; Approx. Time Counter : 9.45}

Ms. Lane explained that the amendments, SB015801.avl - **EXHIBIT (jus11a03)** were provided by **Brenda Nordlund, Department of Justice.**

Motion/Vote: **SEN. HALLIGAN MOVED TO AMEND SB 158. The motion**

carried unanimously.

Discussion:

SEN. HALLIGAN remarked that when someone was stopped who was taking a legal drug and placed under arrest, it was necessary to get a blood test which was then sent to the crime lab. This could take several days to a week. He questioned the status of the defendant in the meantime.

Ms. Lane added that at the hearing, **Ms. Nordlund** explained that the field test could not detect whether the drug is a legal or illegal drug. The person is taken to the station and the intoxilizer is then used. The intoxilizer detects drugs but cannot determine which drugs are involved. The blood test is given at the hospital.

Beth Baker, Department of Justice, explained that the individual would need to be arrested before any of this could happen. This would be based on the officer's probable cause to believe that they are under the influence. The officer would write a complaint but the charge itself would not be filed by the county attorney until they know the charges. The individual would be held for the requisite period if they could not get a ride home.

CHAIRMAN GROSFIELD questioned the situation if the drug test determined that the drug was a legal drug. **SEN. HALLIGAN** stated that this wouldn't matter because he was still driving under the influence of a drug and was impaired to the point where he could not operate a motor vehicle.

SEN. BARTLETT stated that it was her understanding that the bill could stand on its own without Section 1 which makes the possession of any level of dangerous drug a criminal possession offense. **Ms. Lane** understood that Section 1 could be taken out of the bill and the other Sections could stand alone.

SEN. BARTLETT maintained it was her understanding that this bill tries to address persons who are driving under the influence of dangerous drugs and the inability to charge them the way the law is currently written rather than being able to charge them with criminal possession of dangerous drugs.

Ms. Lane stated that at the hearing the question was raised as to why Section 1 was needed. The response was that they thought it was a loophole which stated that it was not illegal use if it is inside your body as opposed to holding it within your possession.

Ms. Baker believed the two provisions could work independently. Section 2 involves 61-5-205 and the rest of the bill deals with

driving offenses and specifically states that if there is any amount of a dangerous drug which is illegally possessed, the person is guilty of the driving offense. If Section 1 was eliminated, the person could not also be charged with criminal possession but could be charged with DUI. The purpose of Section 1 is to make sure ingestion can be the basis for a charge of possession of illegal drugs.

CHAIRMAN GROSFIELD summarized that the issue was whether the committee wanted to clarify that criminal possession includes whether the drug is in your body. He assumed it did.

Charles Brooks, Yellowstone County Commissioner, explained that the bill is patterned after a law in Georgia which has been tried twice in the Georgia Supreme Court and has been upheld. He added that Section 1 is an important ingredient in the bill. They want to make sure that when a driver is stopped, he can be charged with possession of drugs if he has ingested the drugs. This is not in the current statute. We are continually seeing the rise of illegal use of drugs among young drivers.

CHAIRMAN GROSFIELD stated that page 1, subsection (4), did not state any quantity. If a person inhaled second hand smoke, he would have a minimum mandatory sentence of two years.

SEN. DOHERTY stated that the difference in quantity should go to the proportionality of the punishment. If it takes 2 oz. in order to possess the substance, any amount in your body should not require the same punishment.

SEN. BARTLETT questioned whether the bill could be amended so that the opiates do not carry a mandatory minimum. All the other dangerous drugs, except opiates, have the same provision which is subsection (5) on page 2. This states that the maximum term is 5 years and a fine. The maximum for opiates is five years. She questioned why the two year mandatory minimum for opiates was included in the bill. If any amount of substance in a person's body would make that person subject to the penalty, she questioned what would be provided by §46-18-222.

Ms. Lane cautioned that the title and the purpose of the bill as introduced was to make these drug possession laws more stringent or to at least clarify that they should be interpreted more stringently. She believed this would be getting away from the intent of the bill.

Motion: SEN. BARTLETT MOVED TO AMEND SB 158 BY STRIKING THE MANDATORY MINIMUM SENTENCE OF TWO YEARS FOR OPIATES AND MAKING THE NECESSARY CHANGES IN THE TITLE AND RENUMBERING ANY SUBSECTIONS THAT NEED RENUMBERING.

Ms. Lane added that (4) stated "except as provided in 46-18-222." She believed 46-18-222 would be there for use whether the section refers to it or not.

SEN. HALLIGAN raised a concern about amending the bill in this fashion. He believed this could set a precedent. He supported the concept of the amendments.

SEN. BARTLETT withdrew the motion.

SEN. DOHERTY raised a concern about an individual who had enough second hand smoke to drive impaired. He added that the D.A.R.E. Program tells children that they can have their blood tested six months after taking a drug and it will show up on the test. This individual could be subject to a two year mandatory minimum sentence.

CHAIRMAN GROSFIELD stated that it is his understanding that a person's hair could be tested and show drug use two years after the drug was taken.

Mary Craigle, Department of Corrections, explained that the hair test is for LSD. The blood test can find evidence of marijuana six weeks later.

CHAIRMAN GROSFIELD asked about the length of detection of other drugs. **Ms. Cragel** stated that parole and probation officers have a chart that lists how long each drug is detectible by different means.

CHAIRMAN GROSFIELD suggested that the Committee be given more information in this regard. He believed a Committee bill may be necessary to address this issue. Section 1 makes any amount of these drugs a criminal possession.

Mr. Brooks stated that **Jim Hutchison, Montana Crime Lab**, offered to provide more information for the Committee.

Motion: **SEN. HALLIGAN MOVED THAT SB 158 DO PASS AS AMENDED ON THE CONDITION THAT A COMMITTEE BILL BE PREPARED.**

Discussion:

SEN. DOHERTY asked that action on this bill be delayed until further information was provided. His main concern was the mandatory minimum sentence.

SEN. HALLIGAN withdrew his motion.

Motion/Vote: **SEN. BARTLETT MOVED TO AMEND SB 158 BY STRIKING**

SECTION 1. The motion carried with SEN. JABS voting "no".

**Motion/Vote: SEN. BARTLETT MOVED THAT SB 158 DO PASS AS AMENDED.
The motion carried unanimously, 9-0.**

**Motion: SEN. DOHERTY MOVED THAT A COMMITTEE BILL BE PREPARED TO
ADDRESS THE MANDATORY MINIMUM SENTENCE ON THE POSSESSION ISSUE.**

SEN. BARTLETT questioned whether the motion included incorporating ingestion and inhalation into criminal possession.

SEN. DOHERTY agreed it was included if this could be proportional to the crime.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON SB 65

{Tape : 2; Side : A; Approx. Time Counter : 10.28}

Motion: SEN. DOHERTY MOVED TO AMEND SB 65, **EXHIBIT(jus11a04).**

Discussion:

SEN. HOLDEN remarked that it is his understanding that school boards already have the ability to set a wide range of school policies.

SEN. DOHERTY claimed that school districts have authority to set different policies. This legislation would create a gun free school zone. It would be useful to have each individual school district determine how they want to handle the incidental situations.

SEN. HOLDEN claimed that if a school district set a policy that allowed ranchers to have a gun in their pickup, they may be accepting responsibility for what might occur in the event of a tragedy.

Steve Bullock, Department of Justice, declared that this amendment was drafted addressing the discussion about whether or not the school boards would have this authority. Ensuring local control may be more prevalent in one area than in another.

Lance Melton, Montana School Boards Assoc., stated that the amendment contained language which they have already advised their members that they have the right to do. Model policies for school districts are prepared after every legislative session. If a rural district was not interested in certain aspects of this, they would either provide an outright exemption for that

district or base an exemption on specific property that they identify as something that should be outside this law. The concern about a school district accepting a certain measure of responsibility for exemptions may have some merit.

SEN. BISHOP saw this as a simple inconvenience. Persons who have a concealed weapon permit are not allowed to carry their weapon in a courthouse or a bank. People should be able to take their gun out of the back of the pickup and leave it at home. There is no need to have that gun on the school grounds. Inconvenience doesn't bother him at all.

SEN. MCNUTT remarked that he may be out hunting and there could be a hunting knife on the dash of the pickup and three to four shotguns in the pickup. If he needs to stop at school to pick up his daughter, he would need to first stop at home and unload the pickup. This does not work in a rural setting. This legislation is not needed in rural Montana.

CHAIRMAN GROSFIELD suggested eliminating the first two lines of the amendment. This would state that the trustees shall adopt a policy identifying criteria for permitted possession of carrying or storing of a weapon on all or a portion of school property. This would require local districts to deal with the issue according to their local circumstances.

SEN. DOHERTY contended that school districts don't like to be told that they must do something.

Mr. Melton stated that the **Montana School Boards Association** provides policy services free of charge to school districts. They would have no objection to the language in the amendment if it went no further than "shall adopt that policy". A model policy is available to the members that exempts hunter safety programs and other programs can be tailored when members ask them to do so. The mandate would be adoption of a policy that is available to most, if not all, of their members.

He added that the proponents on the bill included the **Montana Rural Education Association, the Montana School Boards Association, and the School Administrators of Montana.**

SEN. HOLDEN believed that there was federal law on this issue and questioned how that would work with this legislation. **Mr. Melton** stated that there is federal law which makes it a federal misdemeanor to bring a firearm within 1000 feet of a school. This provision was declared unconstitutional and then was repassed with language to respond to the Court's ruling. The Court held that this interfered with interstate commerce.

SEN. DOHERTY agreed that the suggested language would work.

SEN. DOHERTY withdrew the motion.

Motion/Vote: SEN. DOHERTY MOVED TO AMEND SB 65 WITH THE LANGUAGE SUGGESTED BY CHAIRMAN GROSFIELD. The motion carried unanimously.

SEN. DOHERTY conveyed that **SEN. SHEA** asked for an additional amendment to the school property language that stated that the definition did not include school trust lands.

Ms. Lane explained that the conclusion was that school trust lands are owned by the state and not by the school districts and wouldn't fall into the definition.

Mr. Melton stated that there are laws, some under challenge, that allow school districts to lease certain state lands for their facilities. He agreed that state trust lands are not school lands with the exception of state trust lands that are under a lease by a particular school district.

CHAIRMAN GROSFIELD stated that the language at the top of page 2 mentioned land or other property "owned or occupied". This would include a rental from a school trust or a landowner. The definition should cover the issue that is raised.

Motion: SEN. BARTLETT MOVED SB 65 DO PASS AS AMENDED.

SEN. HOLDEN disagreed with requiring the school boards to address the issue. Why should the school boards be forced to address this issue when the urban cities that have the problem are able to address the issue? They cut bales on their ranch every morning with a straight razor, which is listed as a weapon in this bill. He takes his children to school with that same pickup. This legislation is another expansion of gun control that is being pushed on areas where there is no problem. If a problem is developed, they can address it at that time. He believes in preserving Montana's culture as long as possible.

SEN. BARTLETT stated that with the amendment it is very clear that a local district can do what is needed to reflect their local circumstances and if a problem did develop this law gives them more flexibility to change the policy that they adopted. The Rural Education Association testified in favor of this law so there are some rural districts that are interested in having this kind of local authority.

CHAIRMAN GROSFIELD stated that this legislation would require every local school district to deal with the issue. He supports local control.

Vote: The motion carried on roll call vote 5-3.

ADJOURNMENT

Adjournment: 11:28 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus11aad)